

## **9 FAM 40.1**

### **DEFINITIONS**

*(CT:VISA-1684; 09-08-2011)  
(Office of Origin: CA/VO/L/R)*

## **9 FAM 40.1 RELATED STATUTORY PROVISIONS**

*(CT:VISA-1684; 09-08-2011)*

See INA 101(a), 101(b)(1), 101(b)(2), 101(b)(5), 101(c)(1), 101(h), 202(b), and INA 101(c)(1). See also *Section* 424 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 (Public Law 107-56) and *Section* 714 of the International Security and Development Cooperation Act of 198, (Public Law 97-113).

The approval referred to in the first sentence of the INA 202(b) of the Immigration and Nationality Act shall be considered to have been granted with respect to Taiwan (China).

*Section 424. Age-Out Protection for Children.*

*For purposes of the administration of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), in the case of an alien--*

- (1) whose 21st birthday occurs in September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 90 days after the alien's 21st birthday for purposes of adjudicating such petition or application; and*
- (2) whose 21st birthday occurs after September 2001, and who is the beneficiary of a petition or application filed under such Act on or before September 11, 2001, the alien shall be considered to be a child for 45 days after the alien's 21st birthday for purposes of adjudicating such petition or application.*

*INA 202(b)*

*(b) Rules for Chargeability\**

*Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of a numerical level established under subsection (a)(2) when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this Act the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that-*

- (1) An alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year;*
- (2) If an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year;*
- (3) An alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; and*
- (4) An alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.*

*\*As amended by Section 4, Act of Nov. 14, 1986, Public Law No. 99-653, 100 Stat. 3655 and Section 102 of the Immigration Act of 1990, Act of Nov. 29, 1990, Public Law No. 101-649, 104 Stat. 4978; effective Oct. 1, 1991.*

## **9 FAM 40.1 RELATED REGULATORY PROVISIONS**

*(CT:VISA-1684; 09-08-2011)*

See 22 CFR 40.1.

### **40.1 Definitions.**

The following definitions supplement definitions contained in the Immigration and Nationality Act (INA). As used in the regulations in parts 40, 41, 42, 43 and 45 of this subchapter, the term:

- (a)(1) Accompanying or accompanied by means not only an alien in the physical company of a principal alien but also an alien who is issued an immigrant visa within 6 months of:
  - (i) The date of issuance of a visa to the principal alien;
  - (ii) The date of adjustment of status in the United States of the principal alien; or
  - (iii) The date on which the principal alien personally appears and registers before a consular officer abroad to confer alternate foreign state chargeability or immigrant status upon a spouse or child.
- (2) An "accompanying" relative may not precede the principal alien to the United States.
- (b) Act means the Immigration and Nationality Act (or INA), as amended.
- (c) Competent officer, as used in INA 101(a)(26), means a "consular officer" as defined in INA 101(a)(9).
- (d) Consular officer, as defined in INA 101(a)(9) includes commissioned consular officers and the Deputy Assistant Secretary for Visa Services, and such other officers as the Deputy Assistant Secretary may designate for the purpose of issuing nonimmigrant and immigrant visas, but does not include a consular agent, an attaché or an assistant attaché. For purposes of this regulation, the term "other officers" includes civil service visa examiners employed by the Department of State for duty at visa-issuing offices abroad, upon certification by the chief of the consular section under whose direction such examiners are employed that the examiners are qualified by knowledge and experience to perform the functions of a consular officer in the issuance or refusal of visas. The designation of visa examiners shall expire upon termination of the examiners' employment for such duty and may be

terminated at any time for cause by the Deputy Assistant Secretary. The assignment by the Department of any foreign service officer to a diplomatic or consular office abroad in a position administratively designated as requiring, solely, partially, or principally, the performance of consular functions, and the initiation of a request for a consular commission, constitutes designation of the officer as a "consular officer" within the meaning of INA 101(a)(9).

(e) Department means the Department of State of the United States of America.

(f) Dependent area means a colony or other component or dependent area overseas from the governing foreign state.

(g) DHS means the Department of Homeland Security.

(h) Documentarily qualified means that the alien has reported that all the documents specified by the consular officer as sufficient to meet the requirements of INA 222(b) have been obtained, and the consular office has completed the necessary clearance procedures. This term is used only with respect to the alien's qualification to apply formally for an immigrant visa; it bears no connotation that the alien is eligible to receive a visa.

(i) Entitled to immigrant classification means that the alien:

(1) Is the beneficiary of an approved petition granting immediate relative or preference status;

(2) Has satisfied the consular officer as to entitlement to special immigrant status under INA 101(a)(27) (A) or (B);

(3) Has been selected by the annual selection system to apply under INA 203(c); or

(4) Is an alien described in §40.51(c).

(j) Foreign state, for the purposes of alternate chargeability pursuant to INA 202(b), is not restricted to those areas to which the numerical limitation prescribed by INA 202(a) applies but includes dependent areas, as defined in this section.

(k) INA means the Immigration and Nationality Act, as amended.

(l) Make or file an application for a visa means:

(1) For a nonimmigrant visa applicant, submitting for formal adjudication by a consular officer of an electronic application, Form DS-160, signed

electronically by clicking the box designated "Sign Application" in the certification section of the application or, as directed by a consular officer, a completed Form DS-156, with any required supporting documents and biometric data, as well as the requisite processing fee or evidence of the prior payment of the processing fee when such documents are received and accepted for adjudication by the consular officer.

(2) For an immigrant visa applicant, personally appearing before a consular officer and verifying by oath or affirmation the statements contained on the Form DS-230 and in all supporting documents, having previously submitted all forms and documents required in advance of the appearance and paid the visa application processing fee.

(m) Native means born within the territory of a foreign state, or entitled to be charged for immigration purposes to that foreign state pursuant to INA section 202(b).

(n) Not subject to numerical limitation means that the alien is entitled to immigrant status as an immediate relative within the meaning of INA 201(b)(2)(i), or as a special immigrant within the meaning of INA 101(a)(27) (A) and (B), unless specifically subject to a limitation other than under INA 201(a), (b), or (c).

(o) Parent, father, and mother, as defined in INA 101(b)(2), are terms which are not changed in meaning if the child becomes 21 years of age or marries.

(p) Port of entry means a port or place designated by the DHS at which an alien may apply to DHS for admission into the United States.

(q) Principal alien means an alien from whom another alien derives a privilege or status under the law or regulations.

(r) Regulation means a rule which is established under the provisions of INA 104(a) and is duly published in the Federal Register.

(s) Son or daughter includes only a person who would have qualified as a "child" under INA 101(b)(1) if the person were under 21 and unmarried.

(t) Western Hemisphere means North America (including Central America), South America and the islands immediately adjacent thereto including the places named in INA 101(b)(5).

[56 FR 30422, July 2, 1991, as amended at 56 FR 43552, Sept. 3, 1991; 59 FR 15300, Mar. 31, 1994; 61 FR 1835, Jan. 24, 1996; 64 FR 55418, Oct. 13, 1999; 65 FR 54413, Sept. 8, 2000; 71 FR 34520, June 15, 2006; 73 FR 23068, Apr. 29, 2008; **75 FR 45476, Aug. 3, 2010**]